United States Court of Appeals

for the

District of Columbia Circuit



TRANSCRIPT OF RECORD

BRIEF OF APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO 14609

United States Court of Appeals
For the
District of Columbia Circuit

FILED
400
DEC 5 1958
Joseph W. Stewart
CLERK

TSUNG MER DOW

APPELLANT

VS.

U.S. COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE

AND

MARYLAND CASUALTY COMPANY

APPELLEE

APPEAL FROM UNITED STATES DISTRICT COURT ORDER
OF DISMISSAL

STATEMENT OF QUESTIONS PRESENTED

1. Whether the court erred in dismiss the appellant's case which asks damages from appellees, asks for the release of his bond money and the termination of deportation order against the appellant as "appearing fail to state a claim upon which relief may be granted"?

2. Whether the appellant has been wrongfully forced to sign a memorandum which recognizes a statement by a court appointed attorney who was rejected by appellant because he is working against the sgit of appellant?

3. Whether the court erred in construe the appellant's objection of the first pretrial memorandum as "appearing refuse to sign any pretrial memorandum"?

JURISDICTIONAL STATEMENT

This Court has jurisdiction of this case by virtue of section 1291 of Judiciary and Judicial Procedure, U.S.C. which reads as follows:

"The Courts of Appeals shall have jurisdiction of appeals from all final decisions of the District Courts of the United States."

STATEMENT OF THE CASE

I April 1948, the appellant arrived at Washington D.C. after his discharge from Missouri State Sanatorium. The Immigration office suddenly issued an order of deportation against appellant on charge of lost student status. Whereas he is only awaiting the openning of fall semester to attend school in Washington. There is no school start at April and he has no choice but have to wait until a new term. The officer in charge insisted to put the appellant in 1.000 dollar bond whereas the warrant requests only 500. At that time, the appellant insisted the order was false and unjust, refuse to put up a bond and the appellant was detained in the district Jail for two days and his brother Tsung I Dow put his money in bond at appellant's protest.

In May, 1949, appellant was ordered to be deported and I was imprinsoned at Ellis Island for many days. Fin ally they turned me loose but refuse to pay my way back to Washington where the appellant was taken. Since the appellant was came from China, there is no reason he should refuse to go back to China. The appellant didn't ask any one for favor but to maintain justice. The Hon. Congressman Walter Judd voluntarily introduced a bill for the appellant to stay whereas the appellant merely asked him or his help to obtain a few days delay so the appellant may have enough time to prepare his departure. The appellant protested for their overnight notice for departure.

Since the appellant, as a student, was not allow to work nor his health permit, he need money urgently to keep on to live also he need his bond money to evacuate his family from China mainland before communits take over. Unfortunately, the cool blooded appellee refuse to do neither! They neither carry out the deportation nor cancel the deportation procedure nor to release the bond money. The appellant was really mad and can not understand this kind fantanstic rediculous inhuman policy! Some Congressman and Senator's office told me they want me be naturalized. This is more fantastic for our Oriental mind to understand! How could you expect to naturalize a person when you are taking actions to deport him? How could you want him to get married while treated him with such kind brutality! I believe our main trouble is too difficult to understand American people it is more impossible to understand American girls. I don't believe human relations ever can be improved by brutalities and hostile actions by American goverment.

In 1955, the Immigration office informed the Maryland Casualty Commpany, that the appellant's bond has been cancelled and the co-appellee (Maryland Casualty Co.) still refuse to release the bond money unless the appellant agree to let them to deduct 72.33 as a premium. The appellant informed the co-appellee that they have no right to deduct that sum because the co-appellee detained the appellant's bond money since 1949 without his authorization. It is illegal to deduct premium by the said co-appellee. The appellant refused to recoginze the co-appellee as his surety since 1949. Their obiligation as surety for appellant has been terminated after the appellant delivered himself for deportation in May, 1949.

In April 1956, the appellant filed a suit in the District Court for ten thousand dollar damage against appellees for their abuse of power to make false arrest, false imprisonment, false deportation, unlawful detain of his bond money, unreasonable handling of his case. Not only the appellant himself suffered a very miserable life but he also unable to save his family from the hand of communists. The loss of appellant is too great to be compensated by any material means.

It is inconceivable the court appointed lawyer Mr. Jack Wasserman, proceeded the case without made one contact with the appellant, without consult the appellant on anything, submited papers without any knowledge from the appellant! Before pretrial hearing, the appellant learned from appellee that the said a attorney has agreed to submit a joint memorandum. The appellant demanded to see the statement and surprisingly discovered he is working against the interest of appellant, his statement would destroy the whole suit of appellant, therefore, the appellant formally requested his release as my attorney and the Hon. Judge Sirica granted his resignation from my case.

Strangely enough, at pretrial hearing, the Hon. Judge Letts dictated a court memorandum that the case is sufficiently stated by the joint statement of Jack Wasserman and attorneys of appellees. The appellant disagreed and objected to such a court statement and refuse to sign until further study. The Hon. JudgeLetts refused to correcf the statement,denied appellant's all motions to strike out Jack Wasserman's statement, and ordered dismissal to this case. Two subsequent motions to reinstate the suit also was/denied even the appellant finally agreed to sign that court memorandum after he gets his position clear. Hereby a notice of appeal was entered by appellant for high court review.

SUMMARY OF ARGUEMENT

The arguement is very simple, it is apparently a gross error by the District Court to dismiss the case on the ground the original complaint appearing fail to state a claim on which the relief may be granted. The appellant contends that a damage suit of ten thousand dollars against appellees for false arrest, false imprisonment, false deportation, unreasonable handling of the deportation procedure and unlawful detain of appellant's bond money can not be constraed as fail to state a claim. The court order of dismissal has openly disregard the facts and randered a gross injustice to the appellant and also opened a new precedent which is very bad for all future cases to come. The court can not use the term "appearing" as a ground for action but must base on solid fact.

Also, the court seemed deny the appellant's right to disagree with court statement regardless how erroneous the statement may be. It is simply not the fact that the appellant is appearing refuse to sign any pretrial memorandum as the fact present the appellant even finally agreed to sign the original or the first court memorandum in his subsequent motions to reinstate the suit after he made his position clear.

ARGUEMENT

The arguement is just about the same as my summary of arguement. The main point is that the court has dismissed my suit in an open disregard of facts. In my original complaint, I demanded ten thousand dollars damage from appellees, demanding the cancel of tthis unlawful deportation order, demanding the immediate release of appellant's bond money amount to 1.000 dollars plus 6% interest since 1949 from the co-appellee Maryland Casualty Co..

How can this be construed as appearing fail to state a claim upon which relief may be granted? This seems appearing a gross disregard of facts and very fantastic and rediculous indeed! The appellant contends that such a bad precedent should never be allowed to be established by the great court of America. Should this dismiss order be sustained, then any damage suit can be throwm out of court without a hearing. It would be a gross abridgement of people's right to sue for damages. Any lawyer can cite my case and demanding the court to dismiss a damage suit as fail to state a claim regardless how precise his suit may state in claim. It is inconceivable such an order should be sustained by the review court.

As a matter of fact, at pretrial hearing, the appellant merely objected to the statement as prepared by the Hon. Judge Letts who inserted the former court apointed lawyer Jack Wasserman's statement as sufficient whereas this attorney's representation had never was accepted by appellant since he had never meet the appellant or communicate with the appellant in any way to discuss my case. The appellant always filed his own papers in every procedure and the said attorney filed several papers in behalf of appellant without the knowledge of the appellant. After he learned Jack Wasserman submitted a joint statement with attorneys of appellees he demand to see the memorandum and discovered it is entirely contrary to his original complaint and that would serve to destroy his whole suit. He immediately asked him to wishdraw as his attorney and formally asked the release of the said attorney at Judge Cirica's court. T he Hon. presiding Judge Cirica granted his release at hearing. The appellant argued at Judge Letts court that the said attorney Jack Wasserman has been released a month ago and his service

never was accepted by appellant, therefore, he has no legal position in this hearing his memorandum can not be recognized as a legal document. The appellant pleaded the presiding judge to strike out Jack Wasserman's name from the statement and adopt the appellant's own statement as the sole ground. The Hon. Judge Letts refused my motions to divorce Jack Wasserman's name from the memorandum. The appellant asked time to study the memorandum further before he sign it. The court dismissed my suit by claiming it appearing the appellant refused to sign any Pretrial Momorandum of this Court. As the fact present the appellant finally even agreed to sign the same pretrial statement in his subsequent motions to reinstate the suit after he made his position clear.

CONCLUTION

It is clear and definite the court order of dismissal is wholly without ground and an open disregard of facts. The appellant did state many claims for relief such as 10.000 dollar damage, the termination of deportation procedure, the release of 1.000 dollar bond. The District Court can not sensibly say that such kind claims by appellant against appellee means he fail to state a claim upon which relief may be granted. Unless the court can produce concrete fact to prove otherwise this dismiss order must be reversed and the case reopened for trial. The appellant preys for reinstate of his suit in order to avoid a gross injustice which would create a very bad precedent to all damage suit and debt suit as well as suit to correct a wrongful administrative order.

Tsung Mer Dow

appellant Tsung Mer Dow

AFFIDAVIS OF SERVICE

I hereby certify that the foresaid brief of appellant has been mailed to appellees on Sept. 29, 1958 to the following address:

1. one copy to the District Attorney's Office
   U.S. Court House, Washington 25, D.C.
2. one copy to Attorney John Wilson
   815 15th St. N.W., Washington D.C.

Tsung Mer Dow
Tsung Mer Dow
1945 Calvert St. N.W.
Washington D.C.

The Brief of appellant has been mailed to appellees on Sept 29. 1958. Mail was deposited at the Chinatown Post office located at Clay St. San Francisco, Calfornia, with postage paid.

Tsung Mer Dow
Nov. 7, 1958

United States Court of Appeals
For the
District of Columbia Circuit

FILED DEC 23 1958

Joseph W. Stewart
CLERK

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RECEIVED

DEC 23 1958

CLERK OF THE UNITED
STATES COURT OF APPEALS

No. 14,609

TSUNG MER DOW,

Appellant,

v.

UNITED STATES COMMISSIONER OF IMMIGRATION
AND NATURALIZATION AND MARYLAND CASUALTY COMPANY

Appellees

MEMORANDUM OF AMICUS CURIAE

JACK WASSERMAN
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INDEX

	Page
JURISDICTIONAL STATEMENT	1
STATEMENT OF FACTS	1
QUESTION PRESENTED	4
CONCLUSIONS AND VIEWS OF AMICUS CURIAE	4

CITATIONS

Cases:

Adler v. Brownell, _____ App. D.C. _____, 242 F. 2d 28 (C.A. D.C., 1957)	4, 5
Gregoire v. Biddle, 177 F. 2d 579 (C.A. 2, 1949)	4
Handlovits v. Adcock, 80 F. Supp. 628 (E.D. Mich., 1948)	5
Lee King Yong v. Pan American Airways, 74 F. Supp. 657 (D.C. Hawaii, 1947)	5
Orvis v. Brickman, 90 App. D.C. 269, 196 F. 2d 762 (C.A. D.C., 1952)	4
Rogers v. Dodge Ln, Court of Appeals, District of Columbia Circuit, No. 14,556	5

STATUTES AND REGULATIONS

United States Code:

5 U.S.C. 1001	1
8 U.S.C. 1253(h)	2
8 U.S.C. 1329 (formerly 8 U.S.C. 164)	5
8 U.S.C. 1362	5
28 U.S.C. 1291	1
28 U.S.C. 2201	1

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,609

TSUNG MER DOW,

Appellant,

v.

UNITED STATES COMMISSIONER OF IMMIGRATION
AND NATURALIZATION AND MARYLAND CASUALTY COMPANY

Appellees

MEMORANDUM OF AMICUS CURIAE

JURISDICTIONAL STATEMENT

This is an appeal from an order entered on April 30, 1958, dismissing plaintiff's complaint. The jurisdiction of the District Court was invoked in the amended complaint herein under 28 U.S.C. 2201 and 5 U.S.C. 1001, et seq. This Court has jurisdiction of this appeal pursuant to 28 U.S.C. 1291. The notice of appeal herein was timely filed on June 23, 1958. On November 25, 1958, appellant submitted his brief herein and on December 5, 1958, the undersigned was appointed to file a memorandum as amicus curiae. Appellee, U.S. Commissioner of Immigration and Naturalization has requested leave to file an answering brief after this memorandum is filed.

STATEMENT OF FACTS

Appellant is a native and citizen of China who was lawfully admitted to the United States as a student on July 29, 1946. (Amended Complaint paragraph 5, admitted by Amended Answer.) He failed to maintain his student

status and by reason of such failure, he has been ordered deported. Appellant contends that this failure should be overlooked since he became ill with tuberculosis, that he was confined to a sanitarium and that upon his release he sought to resume his studies. This contention was considered and rejected administratively. Its refutation can only be evaluated by consideration of appellant's immigration file which is not before the Court.

In 1949 appellant posted an immigration bond, depositing through his brother the sum of $1,000.00 as collateral with appellee, Maryland Casualty Company. The bond was cancelled in 1955, but return of the collateral was delayed. The surety company, at first, insisted on payment of past due premiums. It has now agreed to waive this contention and will return the $1,000.00 to appellant if he and his brother sign releases. As will be noted below, they have refused to execute the same.

Appellant appeared pro se in all of his administrative hearings. During his deportation proceedings appellant was detained for a brief period. (The exact dates do not appear in the present record.) After the entry of the deportation order herein, appellant filed an application under 8 U.S.C. 1253(h) contending that he would be persecuted if returned to China. The application was denied with a statement by the hearing officer that appellant was either "unbalanced or a prevaricator" (Amended Complaint, paragraph 7).

On April 26, 1956, appellant, appearing pro se, filed his own complaint in the District Court serving the Commissioner of the Immigration Service and the Maryland Casualty Company as defendants.

Appellant sought damages against the Commissioner for false arrest and imprisonment. The Commissioner moved alternately, to dismiss, to strike the complaint, or for a more definite statement. On June 29, 1956, Judge Kirkland granted the motion to strike the complaint with leave to file an amended complaint and at the same time appointed the undersigned as counsel for appellant.

I thereafter communicated in writing with appellant's brother and had occasion to confer with appellant at my office after his release from the Glendale Sanitarium.

On July 5, 1956, appellant filed his own version of an amended complaint, typing my name on the papers as attorney. In August, 1956, I filed an amended complaint alleging that appellant had not been represented administratively and had not made an intelligent waiver of counsel and that his deportation to China without first securing travel documents was improper. A cause of action was asserted against the surety company for the return of $1,000.00. The appellee, Maryland Casualty Company, offered to settle by payment of the full $1,000.00 posted as collateral herein, provided releases were signed by appellant and his brother. By letter dated October 9, 1956, I so advised appellant and forwarded the releases. Appellant has refused to concur in this arrangement.

On or about March 23, 1958, appellant came to my office and advised me that he disapproved the pretrial statement which I proposed to submit to Judge Sirica the following day. A copy of this pretrial statement is in the District Court file being transmitted to this Court. Appellant stated that he desired to sue the Commissioner for $10,000.00 for false arrest, imprisonment and for damages. I advised appellant that he had no cause of action for such relief and that I could not represent him in such a proceeding. On March 24, 1958, the matter was explained to Judge Sirica in open court. Appellant advised the District Court (as he has alleged in this Court) that I was working against his best interests (due to my refusal to assert a claim for $10,000.00 damages against the Commissioner). Judge Sirica reprimanded appellant for his attitude, continued the pretrial proceedings to enable him to seek other counsel, if he desired to, and permitted my withdrawal as counsel.

The continued pretrial hearing was held on April 24, 1958, before

Judge Letts. Appellant appeared pro se and orally repudiated the amended complaint and any actions taken by me. He insisted on pursuing his original complaint for false arrest, imprisonment and damages, and refused to sign the pretrial memorandum of Judge Letts. On April 30, 1958, Judge Letts dismissed the original and amended complaints in view of appellant's continued insistence upon a claim for damages. A motion to reconsider was denied on May 12, 1958. Appellant appealed.

QUESTION PRESENTED

The sole issue presented is whether the District Court erred in dismissing, with prejudice, the original and amended complaint herein where the former had been previously stricken and where the latter had been repudiated by appellant in a pretrial hearing.

CONCLUSIONS AND VIEWS OF AMICUS CURIAE

1. The record, including appellant's immigration file, indicates that appellant states and has no claim for damages against the Commissioner who acted within the scope of his authority in detaining him. Orvis v. Brichmoor, 99 App. D.C. 269, 196 F. 2d 762 (C.A. D.C. 1952). See also: Gregoire v. Biddle, 177 F. 2d 579 (C.A. 2, 1949). If this be considered a suit against the United States, it must fail for failure to name the United States as a party defendant. Adler v. Brownell, _____ App. D.C. _____, 242 F. 2d 28 (C.A. D.C. 1957).

2. Procedurally, the case is confused. Judge Letts dismissed the original and amended complaints on April 30, 1958. The original complaint was stricken by Judge Kirkland and was never reinstated. No reason appears for the dismissal by Judge Letts of a complaint previously stricken. The amended complaint stated a cause of action both with regard to the validity of the waiver of counsel and the deportation of an alien without securing travel

documents. The latter issue is presently before this Court in Rogers v. Dodge Lu, No. 14,556 (scheduled for argument December 19, 1958). An alien is entitled, according to statute (8 U.S.C. 1362) and court decisions, to counsel in deportation proceedings unless there is an intelligent waiver. Handlovits v. Adcock, 80 F. Supp. 425 (E.D. Mich., 1948).

With regard to the cause of action against appellee surety company I originally believed that the District Court could entertain jurisdiction under 8 U.S.C. 1329 (formerly 8 U.S.C. 164) which authorizes suits for causes arising under the immigration laws. No attack upon the District Court's jurisdiction was made below with regard to this phase of the case. However, the jurisdictional issue may be raised here for the first time. Adler v. Brownell, supra. It is now my view that this cause of action is purely between private parties and, although it involves the collateral posted on an immigration bond, the issue does not arise under the immigration laws. Low King Yong v. Pan American Airways, 74 F. Supp. 657 (D.C. Hawaii, 1947).

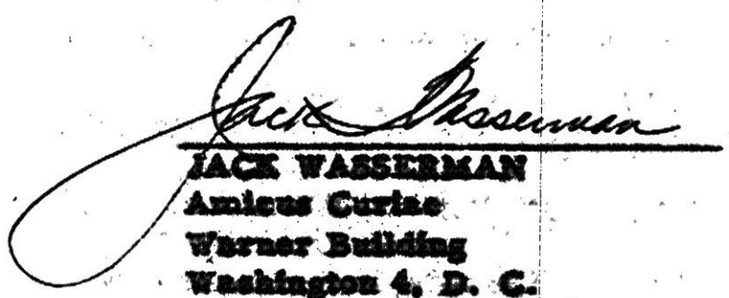
3. Refusal to sign the pretrial memorandum by appellant, a layman, would not appear to be a ground for dismissal on the merits of the amended complaint. Such refusal is at most a refusal to prosecute in conformity with the rules of court. Moreover, in his motion to reconsider, appellant offered to sign a pretrial memorandum (albeit only if it contained a claim for damages).

4. The view of the Government, as expressed to me by the Assistant United States Attorney, Sylvia Bacon, who argued the case below, is that appellant orally and in writing repudiated the amended complaint at the pretrial hearing and that, therefore, nothing remained to be litigated as to the Commissioner. I believe that this is true. However, this should have led to an order withdrawing the amended complaint or a dismissal without prejudice

dismissal should be for lack of jurisdiction.

5. No issue is raised herein as to the right of a person to refuse the advice and assistance of court-appointed counsel. Appellant was given that right.

Respectfully submitted,



JACK WASSERMAN
Amicus Curiae
Warner Building
Washington 4, D. C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of Amicus Curiae was mailed, postage prepaid, this 23rd day of December, 1958, to Mr. Tsung Mer Dow, 1945 Calvert Street, N. W., Washington, D. C., Carl Belcher, Esquire, Assistant United States Attorney, United States Court House, Washington 1, D. C., and Whiteford, Hart, Carmody & Wilson, 815 - 15 th Street, N. W., Washington, D. C.

JACK WASSERMAN